

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**RODNEY TYREAL WHEELER,**

Petitioner,

v.

**CIVIL ACTION NO. 3:10-CV-13  
CRIMINAL ACTION NO. 3:07-CR-70-3  
(BAILEY)**

**UNITED STATES OF AMERICA,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Local Rule, this action was referred to Magistrate Judge Seibert for submission of a report and recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on April 25, 2011 [Crim. Doc. 274 / Civ. Doc. 3]. In that filing, the magistrate judge recommended that this Court deny the § 2255 petition [Crim. Doc. 240 / Civ. Doc. 1] and to dismiss the same with prejudice..

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140,

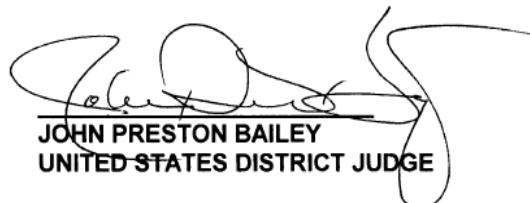
150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Objections to Magistrate Judge Seibert's R & R were originally due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on April 27, 2011. See Crim. Doc. 275. Subsequently, within 14-day objections period, petitioner filed a motion to extend the time by which to file objections [Doc. 276], which this Court granted [Doc. 278], and extended the deadline until June 15, 2011. To date, no objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Report and Recommendation [Crim. Doc. 274 / Civ. Doc. 3]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DENIES** and **DISMISSES WITH PREJUDICE** the petitioner's § 2255 petition **[Crim. Doc. 240 / Civ. Doc. 1]**. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

**DATED:** June 22, 2011.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE